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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,269	01/23/2004	Joseph Z. Sleiman	92835-10	5782
22463	7590	08/09/2006	EXAMINER	
SMART AND BIGGAR 438 UNIVERSITY AVENUE SUITE 1500 BOX 111 TORONTO, ON M5G2K8 CANADA			MAYES, MELVIN C	
			ART UNIT	PAPER NUMBER
			1734	
DATE MAILED: 08/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/762,269	SLEIMAN ET AL.	
	Examiner	Art Unit	
	Melvin Curtis Mayes	1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 June 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

(1)

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 5, 2006 has been entered.

Allowable Subject Matter

(2)

The indicated allowability of claims 12-16 and 18-20 is withdrawn in view of the newly discovered reference(s) to Kearney 4,680,082. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

(3)

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

(4)

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the tamping face having projections projecting outwardly from the base of the tamping face, does not reasonably provide enablement for projections projecting outwardly from the tamping face. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

According to the specification, the tamping face is made up of a base and projections projecting outwardly from the base, i.e. the projections are a part of the tamping face not projecting from the tamping face. For example, Applicant claims and discloses that the projections result from texture of the tamping face. Texture of the tamping face, such as claimed in Claim 9, is not projections projecting from the tamping face but are projections that are actually a part of the tamping face. The claims should claim the tamping face as having a base and the projections projecting from the base since the specification describes the tamping face as having a base and projections from the base.

Claim Rejections - 35 USC § 102

(5)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(6)

Claims 1, 3, 4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ijiri et al. 5,100,491.

Ijiri et al. disclose a die for attaching a label to an article by pressing (tamping labeler) comprising: label suction surface (tamping face) having suction holes 4 (vacuum holes) and regular or irregular jogging part comprised of projections 3b (projections). As shown in Figures 1(d) and 1(f), a plurality of projections 3b surrounds each suction hole 4 (col. 2-5).

(7)

Claims 1, 3, 4, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kearney 4,680,082.

Kearney discloses a label applicator (labeler) comprising: a face plate (face) formed rows of vacuum holes 80 and a plurality of spaced apart raised parallel bars (corresponds to ridges or textured tamping face) to define the label receiving surface, the vacuum holes in recessed areas between adjacent bars (thus the bars mutually exclusive of the vacuum holes). Other types of projections such as rods, pins (corresponds to domes) and the like may be used instead of the parallel bars (col. 2-6, col. 9, lines 31-42, Figs. 1-3).

The language “tamping” in the preamble and body of the claims does not distinguish the claimed face from the face plate of Kearney, does not impart any further structure to the labeler or face and merely refers to purpose of the labeler or face for applying a label by “tamping”

Claim Rejections - 35 USC § 103

(8)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(9)

Claims 1, 3, 4, 6, 7, 9-16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. 2001/0037853 in view of Kearney 4,680,082.

Anderson et al. disclose a labeling apparatus comprising: a bellows wheel 22 (indexing turret) carrying a plurality of bellows 38 (tamping labelers); a chamber 51 to provide vacuum to retain the label and positive pressure to apply the label (vacuum chamber and positive pressure chamber); and label cassette 12 having label strip supply from which labels are stripped and applied to the bellows (label supply). The bellows includes a cap 42 for carrying the labels and the cap includes a plurality of openings 43 (holes) in communication with the chamber (entire document). Anderson et al. does not disclose providing the cap of the bellows with a face having a plurality of projections.

Kearney teaches that in vacuum label applicators in which labels are peeled from a backing strip and pushed across the face of the applicator, there is a progressive increase in friction between the back side of the label and the face of the applicator, which acts in opposition

to the forward force on the label at the stripper edge to exert a buckling force on the label, an undesirable condition. Kearney teaches that to eliminate the problem and provide the additional benefit of reducing friction between the label and face of the applicator, the face of the applicator is provided with bars, rods, pins or the like that project outward from the plane of the face to cause a slight outward bowing of the label as it is pushed across the face of the applicator, the projections are provided across the face in the feed direction of the labels and the holes in the face for providing vacuum and positive pressure are provided in rows between adjacent projections (col. 5, line 54 – col. 6, line 18, col. 8, line 1 – col. 9, line 51).

It would have been obvious to one of ordinary skill in the art to have modified the labeling apparatus of Anderson et al. having bellows each having a cap having a face to receive labels by providing the face of the cap with bars, rods or pins that project outward from the face of the cap across the face in the feed direction of labels to the cap, as taught by Kearney, to eliminate the problem of buckling when labels are peeled from a backing strip and pushed across the face of the applicator and provide the additional benefit of reducing friction between the label and face of the applicator. Providing the cap as textured with bar projections or provided with rods or pins to form the projections (thus forming domes), with the openings (holes) in the cap between projections, would have been obvious to one of ordinary skill in the art to improve the transfer of the labels to the bellows for labeling, as suggested by Kearney.

(10)

Claims 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. 2001/0037853 in view of Kearney 4,680,082 as applied to claims 7 and 14, and further in view of Nielsen et al. 2002/0189741

Nielsen et al. teach that a bellow-type labeler having openings is provided with a disk 166 (valve) to seat against the openings via positive pressure to block the openings during labeling [0034].

It would have been obvious to one of ordinary skill in the art to have further modified the labeling apparatus of the references as combined by providing the bellow labelers with a disk (valve), as taught by Nielsen et al., to block the openings during labeling.

Conclusion

(11)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

JP11-193012 discloses a bellows labeler having a valve.

(12)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Melvin Curtis Mayes
Primary Examiner
Art Unit 1734

MCM
August 4, 2006